

# The Gazette of India

**EXTRAORDINARY**

**PART II—Section 3**

**PUBLISHED BY AUTHORITY**

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**No. 144] NEW DELHI, THURSDAY, MAY 5, 1955**

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**ELECTION COMMISSION, INDIA.**

**NOTIFICATIONS**

*New Delhi, the 4th May 1955*

**S.R.O. 1006.**—Whereas the election of Shrimati Shivrajwati Nehru, wife of the Late Dr. Kishenlal Nehru, Resident of Fawn Brake Avenue, Havelock Road, now Sarojini Naidu Marg, Lucknow, as a member of the Lok Sabha, from the Lucknow District (Central) Constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Triloki Singh, son of Shri Gokaran Dayal Singh, Resident of Ghasiyari Mandi, Lucknow;

Now, Therefore, in pursuance of the provisions of sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri D. S. Mathur, I.C.S., District and Sessions Judge, Lucknow, to be the Chairman of the Tribunal for the trial of the said petition and further appoints Lucknow as the place where the trial of the petition shall be held.

[No. 22/2/55/5488].

**S.R.O. 1007.**—In continuation of the Election Commission's notification No. 19/39/52-Elec.III/3600, dated the 14th March, 1955, published in the Gazette of India, Extraordinary, Part II Section 3, dated the 21st March, 1955 (S.R.O. 614), the Election Commission hereby publishes the judgment of the Assam High Court delivered by it on the 6th April, 1955 on the application filed before that court by Shri Baikunthanath Das for the review or modification of the directions contained in the judgment of the said court dated the 14th February, 1955, in election petition No. 39 of 1952.

**IN THE HIGH COURT OF JUDICATURE IN ASSAM**

**CIVIL (REVIEW) RULE No. 35 of 1955**

**Baikunthanath Das—Petitioner.**

*Versus*

**Damodar Goswami and Others—Opposite Party.**

**For the petitioner:—Mr. F. Ahmed, Bar-at-law.**

**Mr. S. C. Bardoloi, Advocate**

**For O.P. No. 2:—Mr. H. Goswami, Bar-at-law.**

**Mr. B. M. Goswami, Advocate.**

## PRESENT

1. The Hon. Mr. Sarjoo Prosad, C.J.

2. The Hon. Mr. Justice H. Deka.

Date of hearing and order:—6-4-55.

## ORDER

Sarjoo Prosad, C.J.—This application is for review or modification of the direction in our judgment, dated 14th February 1955, given in an application under Article 226 of the Constitution; being C.R. No. 126 of 1953. In that case, we directed that, in view of certain illegalities, the election held on 19th January 1952 in respect of Patacharkuchi-Barama Constituency of the Assam Legislative Assembly, should be set aside and the authorities, if so advised, may hold a fresh election for that purpose. The Patacharkuchi-Barama Constituency is a double-member constituency, one of the seats in the constituency being reserved for a member of the scheduled tribes. The petitioner, Baikunthanath Das, was a candidate for election to that seat, and he secured 12994 votes as against his rival, Sailendra Ramchiary, who secured only 12392 votes. There was thus a difference of 602 votes between the votes secured by the petitioner and those secured by the next candidate. This was after the rejection of the invalid votes which had been issued by mistake by the Polling Officer who was in charge of the polling, not only in respect of the Legislative Assembly seats, but also in respect of the Parliamentary seats.

Mr. Fakhruddin, on behalf of the petitioner, urges that the election of Baikunthanath Das for the reserved seat should not be affected by our direction aforesaid, because, under section 102(c) of the Representation of the People Act, 1951, his election could only be set aside if the result of the election in his case had been materially affected by the improper reception or refusal of votes. It is obvious in his case that even if those improper votes, which had been wrongly received, were rejected, as indeed they were actually rejected by the Polling Officer, the result of the election was not materially affected, the difference between the votes secured by the petitioner and those secured by his rival candidate being so large and overwhelming. It is also urged that so far as his election is concerned, there was no challenge at any stage, and there was no petition filed before the Election Tribunal questioning his election. Mr. Hareswar Goswami who appeared on behalf of the petitioner in the earlier application, urges that he had, in substance, challenged the whole election in that constituency on the illegality which arose on account of the illegal reception of votes. This argument is misconceived. We gather from the judgment itself that the attitude of his client then was that he would have been satisfied if only the decision of the Election Tribunal were quashed. This, we were unable to do, because, in the case of the candidate whom he represented, we held that the result of the election was materially affected by the improper reception of some votes. That being so, we think that the election of Baikunthanath Das, the petitioner in the present case, could not be set aside, and the direction which we gave on the previous occasion, therefore, stands modified to this extent. The election of Baikunthanath Das will stand and a fresh election, if any, may be held in respect of the other seat, which is the general seat, in Patacharkuchi-Barama Constituency, for election to the Assam Legislative Assembly.

There will be no order for costs of this application.

Sd/- SARJOO PROSAD,  
Chief Justice.

Sd/- H. DEKA,  
Judge.

[No. 19/39/52-Elec.III/5502].

By order,  
K. S. RAJAGOPALAN, Asstt. Secy.